

Internal Revenue Service
memorandum

CC:TL
Br4:GJDickey

date: **FEB 09 1988**

to: Regional Counsel, Southeast Region CC:SE

from: Director, Tax Litigation Division CC:TL

subject: Stipend Cases: I.R.C § 117, Rev. Rul. 75-280 in G.C.M. 37810

This is in response to your request for technical advice dated November 12, 1987, in which you requested our views with respect to the continued applicability of Rev. Rul. 75-280, 1975-2 C.B. 47.

ISSUE

Whether Rev. Rul. 75-280, 1975-2 C.B. 47 continues to reflect Service position even though it was recommended that it be revoked in G.C.M. 37810, Revenue Ruling 75-280, CC:I-68-77 (Jan. 2, 1979).

DISCUSSION

As you know, the Interpretative Division recommended in G.C.M. 37810 that Rev. Rul. 75-280 should be revoked. However, Rev. Rul. 75-280 was not revoked. Instead, the Interpretative Division subsequently recommended in G.C.M. 39090, Revenue Ruling 75-280, I-68-77 (Dec. 8, 1983) that Rev. Rul. 75-280 should be distinguished rather than revoked. A proposed revenue ruling to this effect was also prepared. The Tax Litigation Division, in a memorandum (attached) dated June 19, 1984 to the Special Appellate Counsel objected to the proposed modification of Rev. Rul. 75-280 and recommended that Rev. Rul. 75-280 should be unqualifiedly revoked. However, Rev. Rul. 75-280 has neither been revoked nor modified by a subsequent revenue ruling. Accordingly, Rev. Rul. 75-280 continues to reflect Service position and must be followed in those cases in which the tests set forth in Rev. Rul. 75-280 are satisfied.

As you know, the Commissioner of Internal Revenue has received a letter from Senator Lawton Chiles dated December 21, 1987, questioning the Service's apparent failure to apply Rev. Rul. 75-280 in various cases. The proposed, but

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unapproved, reply to Senator Chiles takes the position that for the tax years prior to the Tax Reform Act of 1986, the Service will concede those cases where the taxpayer has satisfied the three part test of the ruling.

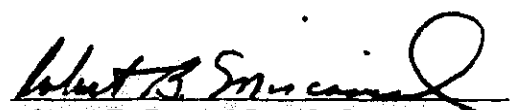
Your attention is also invited to David M. Pozar, T.C. Memo. 1980-559. There, the Court held that payments made to a Ph.D. candidate constituted a scholarship even though the United States Army Research Office afforded financial assistance to and benefited from the research involved. In holding for the taxpayer, Judge Tannewald made the following statement with respect to Rev. Rul. 75-280:

While respondent's rulings are not binding upon us ... we see no reason to depart from a ruling in a situation, such as is involved herein, where respondent does not dispute the continued vitality thereof. Moreover, we are entitled to utilize Rev. Rul. 75-280, supra, as a reflection of administrative interpretative of a statute available as an aid to construction. See Hanover v. Commissioner, 369 U.S. 672, 686 (1952).
(Emphasis supplied)

If you have any further questions, please contact Gordon John Dickey or Robert B. Miscavich at FTS 566-3308.

MARLENE GROSS
Director

By:


ROBERT B. MISCAVICH
Senior Technician Reviewer
Branch No. 4
Tax Litigation Division

Attachments:

GCM 37810

GCM 39090

Memo of June 19, 1984

Proposed letter to Senator Chiles